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Attorneys for the United States

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION  
12

13 UNITED STATES OF AMERICA,	)	Case No. CR 18-0346 JD
	)	
14 Plaintiff,	)	STIPULATION AND <del>PROPOSED</del>
	)	PROTECTIVE ORDER REGARDING
15 v.	)	PRODUCTION OF "PROTECTED MATERIALS"
	)	
16 IVAN SALCEDO and	)	
17 ARTHUR VILLANUEVA,	)	
	)	
18 Defendants.	)	
	)	
	)	

19  
20 STIPULATION

21 The United States of America, by and through Assistant United States Attorney Brian R.  
22 Faerstein, defendant Ivan Salcedo, by and through his attorney David Rizk, and defendant Arthur  
23 Villanueva, by and through his attorney Anthony Tall, hereby stipulate as follows:

24 Defendants are charged in a three-count Indictment, alleging one count of conspiracy to  
25 distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(viii), and 846, and  
26 two counts of distribution of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and  
27 841(b)(1)(A)(viii). Pursuant to the defendants' request for discovery, the government has made an  
28 initial production of written discovery materials to the defendants in this case. The government intends

1 to produce additional discovery containing identification information of a confidential informant (CI)  
2 and an undercover law enforcement officer (UC). There is a credible basis that one or more of the  
3 government's witnesses, specifically a CI and UC, may be endangered if their identities are revealed.  
4 The defendants do not concede that the government's arguments are correct, but agree that, if correct,  
5 they state a basis to believe that there are significant witness endangerment issues.

6 Pursuant to this Protective Order, the government will produce to defense counsel in this case  
7 audio and video recordings pertaining to the charges in the Indictment. The audio and video recordings  
8 include materials that the government deems to be sensitive, based on witness safety concerns.

9 Materials produced according to this Protective Order will be labeled as "PROTECTED  
10 MATERIALS," and will include (1) audio recordings of communications and/or meetings between one  
11 or both of the defendants and CI and/or UC, and (2) video recordings of communications and/or  
12 meetings between one or both of the defendants and CI and/or UC. This Protective Order does not  
13 apply to discovery that is not marked PROTECTED MATERIALS. Any discovery with the designation  
14 PROTECTED MATERIALS is, however, subject to this Protective Order with the following  
15 restrictions:

16 1. Except when actively being examined for the purpose of the preparation of the defense of  
17 the defendants, all PROTECTED MATERIALS shall be stored and maintained in a locked or otherwise  
18 secure location or device (if stored electronically), meaning, a location or device which is accessible  
19 only to Covered Individuals as defined in paragraph 2 below. Defense counsel and other Covered  
20 Individuals shall not permit any person access of any kind to the PROTECTED MATERIALS, except as  
21 set forth below.

22 2. Only the following individuals ("Covered Individuals") may examine, view, or listen to  
23 the PROTECTED MATERIALS:

- 24 a. The defendants' counsel of record;
- 25 b. Members of defense counsels' law offices who are assisting with the preparation  
26 of the defendants' defense, but not including any person with a prior relationship  
27 to the defendant(s) that falls outside the scope of legal representation (e.g., a  
28 familial or social relationship);

- 1 c. “Contracted Individuals,” whom the defense engages to assist in this matter,  
2 including paralegals, attorneys, discovery coordinators, investigators and/or  
3 experts. The parties agree that “Contracted Individuals” shall be limited to  
4 professionals contracted to assist defense counsel in the defense of this matter,  
5 and shall not include any individual with a prior relationship that falls outside the  
6 scope of legal representation (e.g., a familial or social relationship); and
- 7 d. The defendants and third-party percipient witnesses to the events alleged in this  
8 case may view the PROTECTED MATERIALS, but only in the presence of  
9 (i) defense counsel or another authorized person listed in this paragraph, or  
10 (ii) counsel for the third-party witness, provided such counsel executes and  
11 returns a copy of the attached Certification to defense counsel. However, neither  
12 the third-party percipient witnesses, their attorneys, nor the defendants may retain  
13 copies of the PROTECTED MATERIALS, make recordings or take photographs  
14 of the PROTECTED MATERIALS, or otherwise seek to duplicate in whole or in  
15 part any aspect of the PROTECTED MATERIALS.

16 PROTECTED MATERIALS, or any copy or image thereof, may not be shown, played (in the case of an  
17 audio and video recording), or otherwise divulged to any individual who is not a Covered Individual.

18 3. The Covered Individuals may examine the PROTECTED MATERIALS for the purpose  
19 of preparing a defense for the defendants, and for no other purpose. The Covered Individuals may not  
20 discuss the contents of the PROTECTED MATERIALS with any person not listed in Paragraph 2.

21 4. If defense counsel determines that additional persons are needed to review the material,  
22 they must obtain a further order of the Court before allowing any other individual to review the material.

23 5. A copy of this Protective Order shall be maintained with the PROTECTED  
24 MATERIALS at all times.

25 6. Under no circumstance may the defendants take or keep any PROTECTED  
26 MATERIALS, or any copies or images of PROTECTED MATERIALS, outside the presence of their  
27 respective defense counsel. The defendants shall not divulge to any person who is not a Covered  
28 Individual any personal identifying information disclosed in PROTECTED MATERIALS.

1           7.       Prior to receiving access to the PROTECTED MATERIALS, all individuals other than  
2 defense counsel and defendants shall sign a copy of the Certification attached to this Protective Order  
3 acknowledging that:

- 4           a.       They have reviewed the Order;
- 5           b.       They understand its contents;
- 6           c.       They agree that they will only access the PROTECTED MATERIALS for the  
7               purposes of preparing a defense for defendant(s); and
- 8           d.       They understand that failure to abide by this Protective Order may be considered  
9               contempt of Court, punishable accordingly.

10 These signed copies shall be maintained by counsel for the defense and shall not be made available to  
11 the government absent further order of the Court.

12           8.       If the PROTECTED MATERIALS are attached to any pleadings or other court  
13 submissions, the PROTECTED MATERIALS and any pleadings or submissions referencing those  
14 materials shall be filed or lodged under seal.<sup>1</sup>

15           9.       The defense teams shall return the PROTECTED MATERIALS (and any duplicate  
16 copies of the same) to the government, or certify in writing that such materials have been destroyed,  
17 fourteen calendar days after any one of the following events, whichever is latest in time: dismissal of all  
18 charges against defendant(s); defendant's (or defendants') acquittal by court or jury; the expiration of  
19 time to appeal a judgment; or, the conclusion of any direct appeal; provided, however, that upon a  
20 showing of good cause the defendants may obtain from the government or from the Court an extension  
21 to retain PROTECTED MATERIALS beyond this period.

22           10.      After the conclusion of proceedings in the district court or any direct appeal in the above-  
23 captioned case, the government will maintain a copy of the PROTECTED MATERIALS. The United  
24 States will maintain the PROTECTED MATERIALS until the time period for filing a motion pursuant  
25 to 28 U.S.C. § 2255 has expired. After the statutory time period for filing such a motion has expired, the  
26 government may destroy the PROTECTED MATERIALS. In the event the defendants are represented  
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28           <sup>1</sup> This Order authorizes such filings under seal and the parties are not required to seek additional  
authorization from the Court to do so.

1 by counsel and file a motion pursuant to 28 U.S.C. § 2255, the government will, upon receipt of a  
2 written request, provide that counsel with a copy of the PROTECTED MATERIALS under the same  
3 restrictions as trial and direct appeal defense counsel. In the event the defendants intend to file a motion  
4 pursuant to 28 U.S.C. § 2255 without the assistance of counsel, he or they may request that the  
5 government make the Protected Materials available to him or them under appropriate safeguards, or may  
6 apply to the Court for an order requiring the government to do so. The government reserves its right to  
7 oppose any such motion(s) to the extent that it seeks to require the government to disclose  
8 PROTECTED MATERIALS under conditions less stringent than those set forth in this Stipulation and  
9 Protective Order.

10 IT IS SO STIPULATED.

11 DATED: January 28, 2019

Respectfully submitted,

12 DAVID L. ANDERSON  
13 United States Attorney

14 /s/  
15 BRIAN R. FAERSTEIN  
16 Assistant United States Attorney

17 /s/ with permission  
18 DAVID RIZK  
19 Attorney for Ivan Salcedo

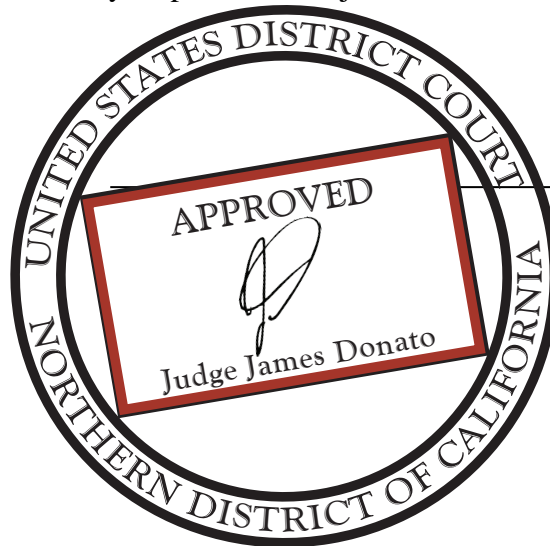
20 /s/ with permission  
21 ANTHONY TALL  
22 Attorney for Arthur Villanueva  
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~~PROPOSED~~ PROTECTIVE ORDER

For the reasons stated above, the Court finds good cause to restrict the disclosure of the PROTECTED MATERIALS produced in discovery in this case. Therefore, the Court orders that the PROTECTED MATERIALS as described above may be produced subject to the restrictions set forth above.

IT IS SO ORDERED.

Dated: January 30, 2019



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6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA  
8 OAKLAND DIVISION

9 UNITED STATES OF AMERICA, ) Case No. CR 18-0346 JD  
10 Plaintiff, )  
11 v. ) CERTIFICATION REGARDING COMPLIANCE  
12 ) WITH PROTECTIVE ORDER REGARDING  
13 ) PRODUCTION OF "PROTECTED MATERIALS"  
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16 The undersigned acknowledges that she or he has received a copy of the Protective Order in the  
17 matter of UNITED STATES v. IVAN SALCEDO and ARTHUR VILLANUEVA, CR 18-0346 JD, and  
18 has read, understands, and agrees to the terms of the Stipulation and Protective Order, and hereby  
19 submits to the jurisdiction of the United States District Court for the Northern District of California for  
20 the purposes of enforcement of the terms and punishment of any violations thereof.

21  
22 Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name